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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Joint written statement* submitted by the France Libertes : Fondation Danielle Mitterrand, American Association of Jurists, Cultural Survival, Emmaus International Association, Stichting Forest Peoples Programme, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The right to water in Peru and the criminalization of protest: human rights are not respected when facing the mining industry*

In Peru, in violation of the international instruments on human rights that Peru is party to, the government does not protect the right of populations living near legal or illegal mining projects. The Cajamarca region is particularly vulnerable since it is the fourth region of Peru with mining concessions, which occupy 40,2% of its territory.

Violation of the right to drinking water and to sanitation

The Universal declaration of human rights recognizes the right to drinking water in its Article 25.1 on the right to health and food. Resolution A/RES/64/292 adopted by the United Nations General Assembly, recognizes the right to drinking water and sanitation for all as a fundamental right, as does resolution A/HRC/RES/15/9 adopted by the Human Rights Council. The Committee on Economic, Social and Cultural Rights (§ 63-A/HRC/WG.6/14/PER/2) has expressed its concerns about the effects of the extractive industry on the rights to health and drinking water.

However, the right to drinking water and to sanitation is far from being a reality in Peru, since it is affected by the mining industry. For instance, in the district of Hualgayoc the Gold Fields mining operations damage the water supply by monopolizing the water for its activities and by polluting them with heavy metals. Furthermore, mining explosions have caused cracks in local houses[1]. Open pit mining is particularly worrying. It endangers and contaminates aquifers with toxic chemicals and heavy metals, degrading water-renewal zones and damaging the environment. For instance, on 17th February 2011, the Yanacocha EIRL mining operations led to the bursting of a pipeline carrying acidic waste. It caused acid, cyanide and heavy metal pollution of the Encajon valley that provides water to the SEDACAJ water treatment plant[2] and the Quishuar irrigation channel.

This pollution causes disease within the local population. Cajamarca is one of the most affected Peruvian regions for stomach cancer. This problem is publicly simply attributed to a poor diet, without any study having been carried out on the impact of water pollution.[3] Many mining projects threaten the right to drinking water because they are situated in the basin headwaters[4]. When mining uses water for the lixiviation process, it pollutes the water and the groundwater that flows into rivers and water basins. Underground water, lakes and spring disappear or are deviated. For instance, the Yanacocha and San José lakes have disappeared. The aquifer never returns to its natural state.

The government does not respect the municipal conservation zones either. For instance, in Baños del Inca district, Cajamarca province, the firm Yanacocha does not respect the town council order n° 051-2006 that creates the municipal conservation zone around the micro watersheds of various rivers of the area and that protects the Shaccsha aquifer. Yanacocha lodged a complaint against the town council in order to carry out its mining operations in the area[5].

Violation of the right to free, prior and informed consent

The ILO Convention N°169, ratified by Peru in 1994, recognizes in its article 6 the right of indigenous peoples to free, prior and informed consent on matters concerning them. But the Peruvian law and reality are not in line with this right. In September 2011, the government approved a law on prior consultation. Decree DS 001-2012-MC establishes that this right to prior consultation is to be applied only after the date of publication of the regulation and also states that projects considered to be in the national interest should be carried out anyway[6]. Furthermore, peasant communities are neither

[1] http://www.noticiasser.pe/13/03/2013/informe/mineria-y-desabastecimiento-de-agua-en-hualgayoc
[2] Public water enterprise in Cajamarca : http://www.sedacaj.com.pe/
[3] http://www.dge.gob.pe/portal/docs/asis_cancer.pdf
[4] See the Conga project situated between Celendin and Bambamarca.
[5] https://celendinlibre.wordpress.com/tag/banos-del-inca/
[6] There have never been prior consultation before

recognized nor counted in the Indigenous population database which have a right to consultation[7] According to the approved regulation, indigenous communities are those that should be consulted. As a consequence, many mining projects are exempt from any consultation!

This situation leads to an increase in the number of conflicts in Cajamarca. Mining activities are involved in 69,6% of the social conflicts in Peru[8]. Populations repeatedly refuse mining projects for fear of water pollution, appropriation and destruction of farming land and virgin territories[9]. Despite this, the Ollanta Humala government has issued a series of measures through Supreme Decree No. 054-2013-PCM, stating that investment in the mining sector must be accelerated and facilitated and declaring it of national interest. In January 2015, the Energy and Mine Ministry issued the DS 001-2015-EM[10] threatening the constitutionality of peasant communities by disregarding the general assembly of the community, which up until now was the authority able to decide on use of community land.

Violation of the right of peaceful assembly and criminalization of protest

The non-consultation of local populations threatens their capacity to defend their rights. The rising number of conflicts has caused many deaths and injuries and has lead to hundreds of allegations. Peaceful protest is being criminalized[11][12]. In Celendin, where the population denounces the Chadin 2 megaproject[13], the *ronderos* (peasant patrolmen) of the area have been persecuted because they are the active forces of resistance against mining projects. The officer in charge of environmental affairs of the Presidency of the Council of Ministers, Vladimiro Huaroc, on 13th January 2014 stated in the newspaper La República that "we must restore order in Cajamarca because the rondas campesinas are in collusion with drug trafficking". This declaration represented a violation of the rights to freedom of expression and of association, as in articles 19 and 21 of the International Pact of civil and politic rights, ratified by Peru in 1978.

This atmosphere brings violence. In violation of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, on January 12th 2014 the government issued Law 30151 that exempts the police and armed forces from criminal responsibility if ,whilst performing their duties, they cause injuries or death using their weapons or by any other means. This law constitutes a blank check for impunity for law enforcement officers.

We call on the Human Rights Council to demand that the Peruvian State:

- Respect the fundamental economic, social and cultural rights of indigenous people, including their right to drinking water and sanitation;
- Respect the fundamental civil and political rights of peasant communities, including the right to assemble peacefully, their freedom of opinion and expression;
- End the criminalization of protest and the military and police intervention;
- Limit the use of force against peaceful demonstrations.

Our organizations appeal to:

- the Special Rapporteur on the rights of indigenous peoples,

[7] http://www.defensoria.gob.pe/grupos-eatencion.php?des=20

[8] For instance in the district San José de Lourdes, province San Ignacio, the Supayacu indiginous community Supayacu and parts of the Naranjos community refuse the activities of Exploraciones Mineras Aguila Dorada S.A.C.

[9] http://www.cooperaccion.org.pe/OCM/XIV_OCM_2014-07-15.pdf

[10] http://www.conflictosmineros.net/contenidos/19-peru/17403-continuan-los-cambio-en-los-procedimientos-mineros-desregulacion-o-simplificacion-administrativa

[11] See details in the prior declarations. The name of the murdered are: Joselito Vásquez Jambo, José Eleuterio García Rojas, José Faustino Silva Sánchez, César Medina Aguilar (16 years old), José Antonio Sánchez Huamán

[12] https://celendinlibre.wordpress.com/2014/05/13/documento-completo-peru-documento-emitido-por-la-cidh-medida-cautelar-caso-conga/

[13] Chadin 2 is a hydroelectric dam project over the Marañón river of the enterprise AC Energia SA with brasilian capital of the Odebrecht enterprise, that will cover 32km² of the high Amazon area and farmland.

- the Independent Expert on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment,
- the Special Rapporteur on the human right to safe drinking water and sanitation, ,
- the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,
- the Special Rapporteur on the right to freedom of peaceful assembly and association,
- the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
- and the Special Rapporteur on human rights defenders,

to direct their attention to the serious and persistent violations suffered by indigenous and peasant communities in Peru.

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*El Frente de Defensa de la provincia de San Marcos ; el Frente de Defensa de la provincia de Cajamarca ; el Frente de Defensa del Valle de Condebamba ; el Frente de Defensa de la provincia de Chota ; el Frente de Defensa de la provincia de San Pablo ; el Frente de Defensa de los Intereses de la Provincia Hualgayoc-Bambamarca ; el Frente de Defensa del rio Marañon y Alta Amazonía Celendin, NGOs without consultative status, also share the views expressed in this statement.